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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.10.2018

CORAM:

THE HONOURABLE Mrs. JUSTICE S. RAMATHILAGAM

C.M.A.No.12 of 2006
and C.M.P.No.33 of 2006

The Oriental Insurance Co. Ltd.,
The Branch Manager,
Gobi. ... Appellant/3rd Respondent

Versus

1.Punithavathy ...1st Respondent/Petitioner
2.R.Ayyappan
3.M.Subramaniam
4.C.Murugesan
(R2, R3 given up) ... Respondents 2 to 4/
Respondents 1,2 & 4

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.10.2003 made in M.C.O.P.No.25 of 2003 on the file of the Motor Accident Claims Tribunal (Additional District Judge, FTC – I), Erode.

For Appellant : Mr.J.Chandran

For Respondents- R1 : Mrs.P.T.Ramadevi

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 27.10.2003 made in M.C.O.P.No.25 of 2003 on the file of the Motor Accident Claims Tribunal (Additional District Judge, FTC – I), Erode.

2. The brief facts of the case are as follows :

On 29.09.1997 at about 8.30 a.m., the deceased Balasubramaniam was proceeding in his Yamaha Motorcycle bearing Registration No.TN-33-A-1310 from Moolappalayam to Thindal along with one Selvakumar as pillion rider in the vehicle. When the said vehicle was reaching near Kalingarayan Illam, an Ambassador car belonging to the first respondent bearing Registration No.MDE 2066 crossed the road from north to south in a rash and

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negligent manner, dashed against the deceased and caused multiple injuries including fracture to the Balasubramanian and he was admitted in the hospital and he died.

3. The appellant/Insurance Company, in the counter statement, has stated that the non-joinder of necessary parties, viz., the owner and the insurer of the motorcycle would render the claim petition not maintainable. The time and manner of the accident stated in the claim petition was also denied by the Insurance Company. Further, it is stated that the deceased himself had driven the vehicle in a rash and negligent manner and caused the accident and sustained injuries. The sum awarded by the Tribunal is also denied by the Insurance Company.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that it is the first respondent vehicle, which came in a rash and negligent manner, caused the accident, hence the Tribunal fixed the liability on the Insurance Company. The Tribunal has assessed the compensation based on the particulars furnished in the claim application in respect of the period of treatment, age, income and occupation of the deceased and awarded a sum of Rs.1,87,000/- as compensation. Aggrieved against the said award, the appellant/Insurance Company has preferred this appeal.

5. Heard the learned counsel for the appellant as well as the respondents and perused the materials available on record.

6. In the grounds of appeal, the appellant has raised the issue that the sum awarded as compensation at Rs.1,87,000/- is highly excessive. The further grievance raised by the appellant is that the accident was caused due to the rash and negligent act on the part of the deceased and the criminal prosecution was also made against him, hence, that aspect was not considered by the Tribunal. It is also an averment in the appeal that postmortem was not conducted. It is also stated that the absence of any proof regarding the fact that the death had occurred only due to the accident, the finding of the Tribunal, with regard to the liability and award of compensation is not justified.

7. On a perusal of the records, it is seen that on the side of the appellant, documents Exs.P1 to P11 were marked. Ex.P1 is the FIR and Ex.P5 is the final report. The Tribunal has observed that the car which involved in the accident was proceeding from north to south and moved to cross the road. Hence, it is clear that when the two wheeler was crossing the road, the driver of the car without noticing the two wheeler crossed the road in a rash and negligent manner and hit against the two wheeler. It is also seen that the case has been registered against the rider of the two wheeler. However, it is

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the accident occurred due to the rash and negligent driving of the driver of the car. On the side of the appellant, no witness was examined to prove the fact that it is the rider of the two wheeler who crossed the road and caused the accident. Hence, in the absence of any evidence let in on the side of the appellant, the finding of the Tribunal is proper and the liability on the Insurance Company was appropriately fixed.

8. Coming to the quantum, the Tribunal by taking into considering the Ex.P10 and also perused the details in Ex.P5-final report held that the deceased Balasubramaniam sustained injuries in the accident. Hence, non-filing of the postmortem certificate, anyway affects the fact that the injured Balasubramaniam died. The tribunal on considering the age of the deceased and his occupation as Video Photographer, assessed his income at Rs.3,000/- per month, which is quite reasonable and by applying multiplier to the age of the deceased, the Tribunal arrived at a sum of Rs.1,80,000/- towards loss of income, which is quite reasonable. Likewise, the sum awarded at Rs.5,000/- towards love and affection and Rs.2,000/- towards funeral expenses are reasonable and proper.

9. Hence, the finding of the Tribunal with regard to the liability and also in awarding of the compensation is quite reasonable and proper. This Court is unable to see any reason to interfere with the findings of the Tribunal. Accordingly, the award passed by the Tribunal in M.C.O.P.No.25 of 2003, dated 27.10.2003 is confirmed.

10. In the result, this Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

11. The appellant/Insurance Company, 2nd and 3rd respondents are directed to deposit the entire award amount as awarded by the tribunal with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the claimant's bank account through RTGS within one week thereon.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal
(Additional District Judge, FTC - I), Erode.

COPY TO

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.J.Chandran, Advocate Sr.68732

CMA.No.12 of 2006
and C.M.P.No.33 of 2006

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